IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

UNITED STATES OF AMERICA,]
v.]]] CR-03-BE-0530-S
RICHARD M. SCRUSHY,	
Defendant.]]]
	ORDER

The matter comes before the court on "United States' Motion Pursuant to Fed. R. Evid. 615 to Sequester Witnesses and to Exempt Case Agents from the Sequestration Order" (doc. # 276). In the motion, the Government seeks on order (1) excluding all potential witnesses from the courtroom during the presentation of testimony, and instructing the witnesses that they may not discuss the testimony of other witnesses; (2) exempting FBI Agents Gerald Kelly and Jeff Proctor from the sequestration order under Rules 615(2) and 615(3); and (3) granting leave to move for exemption of expert witnesses under Rule 615(3) once the Government has determined which experts will testify.

The Defendant agrees that all witnesses should be excluded from the courtroom in accordance with Fed. R. Evid. 615. The Defendant also does not oppose the Government's request for exemption as to expert witnesses under Rule 615(3). Not only because the Defendant does not object, but also because these requests clearly fall within the purview of Rule 615, the court GRANTS requests numbers one and three.

Further, the court ORDERS that all potential witnesses, including any agents or expert witnesses excluded from sequestration, not discuss their testimony with another witness, discuss

the testimony of other witnesses, or read transcripts of other witness' testimony. The court further ORDERS that potential witnesses not read newspapers, listen to radio programming or view television programming discussing or addressing the trial of this matter. Counsel for the parties are ORDERED to provide a copy of this order to their potential witnesses.

As to the Government's second request, that two agents be exempted from the exclusion of witnesses, the Defendant <u>does</u> object. The Government has designated Agent Gerald Kelly as its representative to be exempted under Rule 615(2), and seeks to have Agent Jeff Proctor also exempted, either as an additional representative or as an essential witness under Rule 615(3). That subpart allows exemption from the sequestration rule of "a person whose presence is shown by a party to be essential to the presentation of the party's cause." The Government asserts that Agent Proctor's presence is essential because of his expertise in the accounting fraud aspects of the case, including this intimate knowledge of the voluminous financial documents.

Under Rule 615, the court has discretion to grant an exemption to more than one witness. See *United States v. Alvarado*, 647 F.2d 537, 540 (5th Cir. Unit A 1981). The court need not outline all the factors that make this case complex. The 58-count indictment contains allegations spanning seven years. The trial may last two months and will involve hundreds of thousands of documents and approximately fifty witnesses. Because of the complexity of the case, the court exercises its discretion to exempt Agent Kelly and Agent Proctor from the general rule of exclusion from the courtroom. However, counsel are reminded of the limited space in the courtroom, and also are reminded that these agents are subject to the restrictions stated above for all potential witnesses.

DONE and ORDERED this 16th day of December, 2004.

KARON OWEN BOWDRE

UNITED STATES DISTRICT JUDGE